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P.O. BOX 2550			SHAY, DAVID M	
SALT LAKE CITY, UT 84110				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

# Office Action Summary

## Application No.

10/692,893

## Applicant(s)

SAVAGE, KENT W.

## Examiner

david shay

## Art Unit

3769

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on August 6, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25, 56-67 and 69-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25, 56-67 and 69-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

Applicant argues that the drawing objections are improper. The examiner must respectfully disagree. With reference to the illustrations of Figures 4 and 5, these are illustrations of portions of the device, as shown in Figure 2, as can be easily seen from the originally filed disclosure at the paragraph bridging pages 5 and 6: "Referring to FIG. 2, a light therapy unit 30 according to one implementation of the present disclosure is shown in an open position. A generally rectangular case 32 includes a recess 33 having a lens 34 therein. A light source 50 (shown in FIG. 4) is disposed in the back portion 31 of case 32 behind the lens 34. Case 32 rests in an upright position on a base 36, held in place by a protrusion on the base (not shown). Below lens 34 is a display 38 for depicting messages and data during use. On either side of display 38 are data input buttons 40-43 for providing data to the unit 30, as will be discussed in detail hereafter. Between the display 38 and the lens 34 are two buttons 44 and 45, for the on/off switch and other main menu selections." Thus clearly the illustrations at Figures 4 and 5 are merely the light source, as is readily apparent from the first sentences of each of the second and third full paragraphs on page 6: "Looking at FIG. 4, a light source 50 is shown." and "FIG. 5 shows the light source 50 from a side view." Clearly these are simply illustrations of the source of Figure 2, omitting the lens, 34, which is not illustrated with cross-hatching that indicates transparency. Thus applicant's arguments are not convincing. Similarly not convincing is the assertion the element 22 in figure 1 constitutes a "means for downloading software". The term "data" appears numerous times throughout the originally filed disclosure, always in reference to the user see e.g. page 9 of the originally filed disclosure). There is no indication that element 22 constitutes the means for downloading. Thus this argument is not convincing. Further regarding the illustration of Figure 8, once again, as with the illustration of Figure 4, the illustration of

Figure 8 is a depiction of the device of Figure 7 “with the lens 76 removed to more clearly show the matrix of LEDs 80” (see the originally filed disclosure, the first sentence of the paragraph bridging pages 8 and 9), wherein in Figure 7, the entire device is shown wherein “lens 76 is positioned in front of the matrix 80 to protect the source and to diffuse the intensity of the light” (see the originally filed disclosure, page 8, fourth sentence of the first full paragraph, emphasis added). Also note that individual LEDs are not visible in Figure 7 when the entire device is assembled and the lens 76 is in place. The fact that there is an opening where the lens is placed when the light therapy device is fully assembled, does not constitute a light therapy device wherein the sources are visible, since without the diffusing lens, the device is only a portion of a light therapy device.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “means for downloading software to the processor from an external source”; “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “portable housing at least partially containing the light source”; “window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

It is noted that the terms: “means for downloading software to the processor from an external source” satisfy the three pronged test for a means plus function recitation and with be treated as such herein. See MPEP 2181(I)

Applicant argues that none of the current claim revisions constitute new matter. The examiner cannot agree. For example, claim 1 has been amended to include the term “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux” this term is problematic for several reasons. Firstly the term “less than 2,500 lux” includes values of e.g. 2450 lux, a value which is clearly not taught by the originally filed disclosure. Similarly, the originally filed disclosure is completely silent with regard to an “ocular area”. Applicant’s argument that the cited page from wikipedia evidences that ‘one of ordinary skill in the art would readily understand that the term “lux” refers to the intensity of light across an illuminated area,

such as the ocular area of a subject' (see the instant response, page 16, first sentence of the last full paragraph thereon) is noted. However, even assuming *arguendo* the term "ocular area" were able to be defined by the originally filed disclosure with sufficient precision to be definite, the fact remains that there is physical variation between humans in the "ocular area" and thus the amount of light, as well as the distance the source is from the "ocular area" will affect the intensity falling on the ocular area. While arguments concerning the term "at a distance suitable for ocular light therapy" are noted, they are not convincing, and are further immaterial, since that term has been deleted from the claims by the current amendment.

With regard to the arguments directed towards Figures 4, 5, and 8 (which are illustrations of the devices of Figures 2 and 7, respectively in a non-operative form as set forth above), these are not convincing for the same reasons similar assertions were unconvincing with respect to the drawings.

As for the assertion that paragraph [0049], provides support for "the processor is programmed to control the amount of light..." this is wholly unfounded with regard to the objected to phrase, which includes gradual dimming and increasing of intensity, while the disclosures at paragraphs [0030] and [0033] clearly show that it is the inverter, and not the processor, which provides the ramping. Thus this argument is not convincing.

Concerning the indefiniteness rejections, while the problem of the "light emission area" has been remedied by the instant amendments, a new indefiniteness has been introduced by the recitation of the "ocular area" and the intensity level of "less than 2,500 lux". Further, with regard to claim 69, the disclosure at paragraph [0044] provides no specific structures, materials

or acts with regard to the claimed means, and is therefore insufficient to remedy the deficiencies under 112 first and second paragraph relative to the means recitation.

With regard to Whitcher, applicant argues that the reference does not disclose a light source visible from the exterior of the housing. The examiner must respectfully disagree, since the claims must be read in light of the disclosure, and since all disclosures relative to the complete device teach a diffusing lens in front of the light sources, all of which are illustrated to show that the individual sources are obscured from vision, the claim limitation must mean that either 1) the source is visible in that the light therefrom can be visually perceived, or 2) that, if the devices interposed the user and the light source are removed (as in the Figures argued by applicant as illustrating this feature), then the sources are visible, both of which are manifestly fulfilled by Whitcher. Applicant further argues that the limitation that the source is “configured to emit light primarily having a blue wavelength at an intensity suitable for light therapy” defines over Whitcher. However, as applicant has provided no information whatsoever as to how the CCFLs are “configured to emit light primarily having a blue wavelength” they must inherently produce this light, else applicant’s specification is fatally defective, and this claim is not enabled. Regarding the limitation of the “intensity suitable for ocular light therapy”, it is respectfully noted that claim terms are given their broadest reasonable interpretation in light of the specification (see MPEP 2111 et seq). In the instant case applicant has chosen to define light therapy, as “ocular light is administered to a subject to treat disorders that are responsive to ocular light therapy” (see the Abstract) and thus any intensities which provide any sort of therapy constitutes “an intensity suitable for ocular light therapy”. Attention is respectfully invited to Bishop (attached), Figure 3, at the top of page 4 teaches the luminous efficiency of light of

different wavelengths, and in the second paragraph on page 4, it is noted that typical values of light intensity vary from “50,000 to 100,000 lux for direct sunlight, to 20 to 50 lux for low level interior lighting”. Bishop also notes, at the bottom of page 5, that luminous efficiency is highest at a wavelength of 555 nm with a value of 683 lumens/Watt. Noting that the scopic curve (the dim light vision curve) give the luminous efficiency of 420 nm (blue) light of 10%, thus this light has a luminous efficiency of 68.3 lumens/Watt. Attention is further respectfully invited to the disclosure of Brainard (of record), which specifically states that intensities of  $31.8 \mu\text{Watts}/\text{cm}^2$  can suppress melatonin production (see paragraphs [0077]-[0078] thereof). Now since  $31.8 \mu\text{Watts}/\text{cm}^2$  is equal to 318 milliWatts/ $\text{m}^2$  (there being 10,000  $\text{cm}^2$  in 1  $\text{m}^2$ ) and since the luminous efficiency of 420 nm light is 68.3 lumens/Watt, this means that 318 milliwatts of light at 420 nm produces 21.7 lumens/ $\text{m}^2$  or 21.7 lux, which is sufficient for ocular light therapy, since it produces as suppression in melatonin production. However, as discussed above, 20 lux is the level of lighting in a dimly lit room, and since Whitcher wishes to provide “vivid color display, even in dimly lit environments” (see the instant response, page 21, second full paragraph) the level of illumination must be substantially greater than the level of ambient illumination (i.e. 20 lux) and thus must also be greater than the minimum level for ocular light therapy (i.e. at most 21.7 lux for blue light). Thus applicants’ arguments are not persuasive.

As to the Marsh device, applicant argues that the examiner has combined features from different embodiments. The examiner has done nothing of the kind. The examiner has merely noted that several embodiments of the disclosed by Marsh read on applicants’ claimed device under section 102 of the statute. To the examiner’s knowledge, the fact that a reference discloses multiple embodiments, each of which in and of itself reads on applicant’s claims (as is the case



with Marsh with respect to the claims at bar), does not serve to prevent the reference from being properly applied to the claims. With regard to the intensity requirements of the claims to which Marsh is applied, these are satisfied at least by the EXIT sign embodiment, which, when viewed from many feet away, the “ocular area” will subtend a commensurately small angle of the light output by the EXIT sign, as to be within applicant’s claimed range. For example, say that an EXIT sign outputs 25,000 lux at 10 feet, this means that when illuminated by an EXIT sign, the surroundings would be as bright as daylight. If required the examiner can swear an affidavit that the illumination from an EXIT sign is not as bright as full daylight. Since the intensity of light drops off as the square of the distance, and since  $10^2$  is 100 at a distance whose square is 1,000, or about 32 feet, the intensity of the light will be “less than 2,500 lux” as claimed (if necessary the examiner will provide an affidavit that he has seen EXIT signs from distances of greater than 32 feet away). It is noted that while other embodiments of Marsh still read on the instant claims, the examiner has not argued these specifically, so as not to give applicant the impression that multiple embodiments are being combined.

With regard to the portability of exit signs, the examiner cannot agree with applicant’s assessment that since the EXIT sign is attached to the building, it is not portable. It is well understood that EXIT signs are transported as such to building sites, and subsequently installed, thus EXIT signs are therefore portable. The issue of the viewability of the source has been treated above. With regard to the sign being “configured to be placed upon a generally horizontal surface in an upright position” the examiner the examiner must respectfully note that the term “horizontal” does not appear in the originally filed disclosure, and therefore must be given its broadest reasonable interpretation. The term “upright” is defined as “in a vertical

position” and the term “horizontal” is defined as “parallel to or in the plane of the horizon”, thus a ceiling in a building built to modern standards, where the floor, walls, and ceiling are all square, constitutes a “horizontal surface”, just as the floor, or any table placed on the floor, would be. Further, while exit signs are attached to the ceiling, before this can happen, the sign must be placed upon the ceiling just prior to it being attached, and is thus *capable* of being placed upon a horizontal surface in an upright position, as claimed. Similarly, the sign could also be placed on a table with the attachment portion resting on the table, which also constitutes an upright position within the broadest reasonable interpretation of that term. Further, exit signs have a thickness of less than 10 inches, and thus have a “peripheral dimension of less than 10 inches” as applicant has supplied no limitation as to which dimension is the “peripheral dimension”.

Next applicant asserts that “the EXIT sign of Marsh apparently includes only one light source”, however, a careful reading of Marsh reveals that the exit sign of Marsh also includes a “multi-lamp assembly mounting clip” as disclosed in Figure 4 thereof (see also column 9, lines 18-23), thus clearly the EXIT sign of Marsh is intended to hold multiple lamps. With regard to the sources of Marsh being visible from the exterior of the portable housing, the examiner notes that just as in the incomplete device claimed, the device of Marsh, illustrated in Figure 5 thereof, with the front panel removed, also renders the tubes visible from the exterior of the housing.

With regard to the traffic signal embodiment of Marsh, applicant again argues that Marsh “lacks any express or inherent description that it has a maximum peripheral dimension of ten inches”, however, this is not true. Marsh discusses the traffic light embodiment in the context of the typical traffic signal unit of the prior art (see column 11, lines 49-50) which “Dimensions are:

11 in wide x 30 inches tall by approx. 5.5 inches deep.” (source:

<http://www.trafficlights.com/polysigs.htm>) thus clearly the traffic lights of Marsh are inherently described as having a “peripheral dimension” of less than ten inches. With regard to exterior visibility, as with the instant device, “Once the viewing lens 210 is removed, the CCFL lamp assemblies 212 are visible” (see column 11, lines 58-59). With regard to the manual timer, it is well understood that traffic signals are timed, and that this timing can be changed. Since the timing of the signals can be changed, and this change must arise ultimately from a manual input, the device is considered to include a “manual timer” as claimed.

Regarding Penderson et al, applicant argues that the device of Penderson et al does not illuminate an emission area at an intensity of less than 2,500 lux. The examiner notes that the term “emission area” is nowhere defined in the originally filed disclosure. And the examiner respectfully submits that the device of Penderson et al will illuminate any emission area more than 12 inches from the output of the device with less than 2,500 lux. With regard to claims 83 and 93, as already explained, the vehicle mounted version of the device would allow the pivoting of the device beneath the dashboard and thus the dashboard of the vehicle would serve as the “cover” or “multi-functional element” respectively.

Regarding Yano et al, applicant also argues that Yano et al do not disclose a plurality of light emitting elements. However, as the term “light emitting elements” lacks antecedent basis in the originally filed disclosure, the term must be given its broadest reasonable interpretation when applied to the prior art. As already explicitly set forth, each pixel of the LCD of Yano is considered a “light emitting element” and as such is visible from the exterior of the device (else no picture would be able to be seen). With regard to the capability of emitting light which is

primarily in a blue wavelength, the examiner respectfully submits that many, many movies exhibit scenes including sky and/or sea, which are primarily of a blue wavelength. It is further argued that Yano does not teach the light emitted thereby as being suitable for “ocular light therapy”. However, applicant has provided no parameters associated with such therapy, other than that the light be directed to the eyes, which the light of the Yano et al device is clearly intended to be. Further, as all structural limitations of the claim are met by Yano et al, if there is some aspect of Yano et al that renders it inappropriate for ocular light therapy, then the instant claims are incomplete. Lastly, the intensities suitable for ocular light therapy are discussed above with respect to Witcher, and these arguments are hereby repeated. Thus this argument is not convincing. With regard to the cover configured to “rest flat on a surface”, this limitation must be read in light of the specification. Since claim 83 appears to be drawn to the species of Figures 2 and 3 of the originally filed disclosure, and, as clearly can be seen from these figures, the base portion (i.e. element 36) clearly has a hollow therein, which receives the front portion of the device and mates with the lip surrounding the screen portion of the device, there is in fact only a line contact at the perimeter of element 36. Thus, if the cover of Yano et al, which similarly has a line contact with the surface, (see element 68a in Figure 19C) can also be construed to “rest flat” within the broadest reasonable interpretation of the phrase when read in light of the disclosure.

Concerning the rejection under 35 USC 103, applicant argues that the device of Penderson et al when mounted in and automobile would not fulfill the claim language. The examiner must respectfully disagree, as the dashboard would serve as the “cover” or “multi-functional element” as set forth above, thus this argument is not convincing.

With regard to the combination of Whitcher et al and Arano et al and the HP User's guide, applicant argues that one of ordinary skill in the art would not combine these references because the output of such devices is too low to be considered "light suitable for ocular therapy". However, as set forth above since extremely small intensities are "suitable for ocular therapy" one of ordinary skill in the art would immediately recognize that such devices as disclosed by Whitcher and others would be usable in this way, thus this argument is not convincing. This argument is further not convincing, since, as set forth above and in the previous office action, the wording applicant has chosen clearly shows that the suitability for ocular therapy cannot rest in the intensity of the light, but the spectral distribution. As there is no discussion whatsoever in the originally filed disclosure what renders light "suitable for ocular therapy" one must rely on the prosecution history for the definition of such a term, and this indicates that "white light" as would be generated by white background on a PC, cell phone, or other CCFL backlit screen, would be "suitable for ocular therapy". Thus, the illuminance being specifically excluded from the characteristics of light "suitable for ocular therapy", does not affect claims which do not recite a particular range of illuminance.

With regard to the combination of Whitcher et al and Terman, applicant argues that the only suitable combination of the two would involve the updating of the computer system on Terman using the device of Whitcher et al. The examiner cannot agree. Terman does not propose setting illumination levels to that of the sun (e.g. 100,000 lux for a sunny day). Instead Terman et al specifically discuss capping the illuminance levels at 1,500 lux, for example (see column 7, lines 16-25). Thus applicant's assertion that providing the desired illuminance levels via a computer monitor are not convincing.

As to the combination of Penderson et al and March, applicant argues that Penderson et al teaches away from using fluorescent bulbs, citing column 1, lines 21-23 of Penderson et al. The examiner respectfully submits that applicant has misconstrued the teachings of Penderson et al. As can readily be seen from the immediately preceding text in Penderson et al, which refers to “relatively large devices which are floor or desk mountable”, thus it is clearly relatively large devices which Penderson et al teach away from, not devices which are portable (e.g. flashlights, as taught by Marsh) which simply happen to employ fluorescent bulbs as the light source. Thus this argument is not convincing. Similarly, the assertion that the combination of the devices of Penderson et al and Marsh do not teach light suitable for ocular light therapy are not convincing for the reasons set forth above.

The examiner has taken official notice of the use of clamshell-type Cases, which are notorious in the art for smaller Computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display; and to include an inverter, since these are needed for running CCFLs from DC sources. Applicant has not challenged the examiner's holding, thus this is considered to be admitted prior art (MPEP 2144.03).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The amendment filed September 23, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: “that illuminate the ocular area of a subject at

an intensity of less than 2,500 lux”; “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux ...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes”; “A light therapy apparatus ...comprising...a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “the processor is programmed to control the amount of light”; “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn”; “A light therapy apparatus ...comprising...a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “A light therapy apparatus ...comprising...portable housing at least partially containing the light source”; “A light therapy apparatus ...comprising...window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; “A light therapy apparatus ...comprising...at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-23, 25, 57-67, and 69-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on “hardware in the data processor” and “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux at a distance suitable for ocular light therapy”; “that illuminate the ocular area of a subject at an intensity of

less than 2,500 lux ...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes”; “A light therapy apparatus ...comprising...a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “the processor is programmed to control the amount of light”; specific structures, materials, or acts describing the means for downloading (see MPEP 2181(II)); “A light therapy apparatus ...comprising...a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn”; “A light therapy apparatus ...comprising...portable housing at least partially containing the light source”; “A light therapy apparatus ...comprising...window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; “A light therapy apparatus ...comprising...at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-20, 56-67, 69-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 is indefinite because the precise meaning of the term “ocular area” is unclear. Claim 1 is further indefinite because the term “less than about 2,500 lux is indefinite, because there is nothing in the originally filed disclosure to indicate the divergence of the sources which, in combination with the divergence of the light provided by the diffusing lens, will produce “less



than 2,500 lux” given the various source intensities discussed with respect to CCFLs, it is noted that no source intensities are discussed with respect to other illumination sources. Claims 1-9, 11-20, 21-23, 25, 56, 58-67, and 69-97 are incomplete, as they do not include the diffusing lens, which is a necessary part of the device that affects the exposure intensity. Claim 56 is additionally indefinite because it is unclear whether the configuration of the device is such that the lens is included or not. For the purposes of examination, this claim will be interpreted as requiring the lens, since this is clearly the device referred to in the specification. Claims 65 and 66 recite limitations to the input device “e.g. that the data input device comprises at least one button” (emphasis in original), however, applicant has failed to indicate what type of input device is excluded by this recitation, since, as stated previously, any type of input device can input data pertaining to the subject. Thus the exact “configuration” of the input device that would prevent the input of e.g. subject data, is unclear. Claims 69 and 82 are further indefinite because there are no specific structures, materials, or acts describing the means for downloading in the originally filed disclosure, even assuming the “input device” 22 could be construed to be the means for downloading, thus the equivalents thereof covered by the means recitation are unclear. See MPEP 2181(III).

Claims 87-89 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whitcher.

See figure 3 and column 1, line 31 to column 6, line 23, wherein the screen is the source.

Claims 1-5, 11, 13, 18-21, and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-18; column 1, line 54 to column 6, line 60; column 8, line 65 to column 12, line 22; and column 12, line 60 to column 14, line 39, wherein e.g. the diameter of a single output device is considered the “peripheral dimension”.

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-78, 83-86, and 93-95 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pederson et al.

Wherein the vehicle mounted device could be pivoted under the vehicle dashboard.

Claims 83-88, and 93-97 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Yano et al.

See figures 14A to 22C and column 8, line 3 to column 18, line 20, wherein each pixel of the display is a light emitting element.

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-72, 83-89, and 93-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Brainard. Pederson et al teach a device such as claimed which can be mounted in a vehicle. Brainard teaches that levels of light much less than 2,500 lux are effective to produce therapeutic effects. It would have been obvious to the artisan of ordinary skill provide a lower intensity light, since this can still provide therapeutic effects, as taught by Brainard, and to mount the device in a vehicle with a dash board mounted cigarette lighter, such as a 1969 Camaro Z-1, and pivot the device under the dashboard when not in use, so as to prevent theft, and to employ light of primarily a blue wavelength, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides beneficial therapeutic effects, thus producing a device such as claimed.

Claims 1, 2, 4-6, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al, HP Jornada 700 Series Handheld PC Users Guide and the admitted prior art that inverters are needed for running CCFLs from DC sources. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL, wherein each pixel is considered a light source. Arao et al teach the use of multiple CCFLs and reflectors in a light output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which has already been taken, to include means for receiving data from external sources, such as disk drives, since these are notorious devices routinely included in computers, official notice of which is hereby taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, since this conserves battery power, as shown by HP Jornada 700 Series Handheld PC Users Guide, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Claims 1-3, 12-19, 56-67, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Terman et al and the admitted prior art that

employing a clamshell-type case, is notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming, lighting, and control devices of Terman et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the programming or peripherals and to include multiple CCFLs, since this would provide more even illumination of the screen, or to employ the device of Whitcher et al as the driver for the output of Terman et al, since Terman et al teach that any type of driver device can be used and since the device of Whitcher et al is shock resistant and versatile, wherein stopping or modifying the power from the inverter is considered "controlling the inverter"; and in either case to employ a clamshell-type case, as these are notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display, official notice of which has already been taken, thus producing a device such as claimed.

Claims 1-6, 13-17, 21-23, 25, 73-72, 80-82, and 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh. Pederson et al teach a handheld device which emits light suitable for ocular therapy using LEDs as the illumination source. Marsh teaches the use of an inverter and multiple CCFLs and reflectors in place of LEDs in a light output module. It would have been obvious to the artisan of ordinary skill to employ

the inverter and CCFLs of Marsh in the device of Pederson et al, since these provide more uniform brightness, as taught by Marsh, or alternatively, to employ the portable devices taught by Marsh for therapy, as taught by Pederson et al, since this would provide a beneficial medical effect, and in either case to employ parabolic reflectors with the CCFLs at the focus thereof, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides maximum transfer of the light in the desired direction, to configure the device to have a maximum weight of four pounds, since this is not critical; is well within the skill of one having ordinary skill in the art, as the originally filed disclosure provides no particular materials, arrangements, or devices which enable the achievement of such a weight; and provides no unexpected result, and because Pederson et al state that the weight should be minimized, thus producing a device such as claimed.

Claims 63 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al as applied to claims 1, 7-12, 19, 20, 56-62, 64-67, 70-78, 83-86, and 93-95, and further in combination with Terman et al. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming and control devices of Terman et al in the combined device of Pederson et al and Marsh, since these provide lighting which is appropriate to treat the conditions sought to be treated by Pederson et al, thus producing a device such as claimed.

Applicant's arguments filed July 23, 2007 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson, can be reached on Monday through Friday from 7:00 a.m. to 3:30 p.m. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/david shay/

Primary Examiner, Art Unit 3769